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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,877	06/25/2003	Fred R. Wolf	1437P	5242

23699 7590 07/03/2006

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CHICAGO, IL 60603

EXAMINER
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AHMED, HASAN SYED

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 07/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/606,877		WOLF ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Hasan S. Ahmed		1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) 1-32 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 3, 4, 22 and 23, drawn to an animal diet comprising alpha-lipoic acid, classified in class 424, subclass 442.
- II. Claims 5, 6, 24 and 25, drawn to an animal diet comprising N-acetylcysteine, classified in class 424, subclass 442.
- III. Claims 7 and 26, drawn to an animal diet comprising alpha-lipoic acid and N-acetylcysteine, classified in class 424, subclass 442.
- IV. Claims 8-11, drawn to a diet fed to non-ruminant animals, classified in class 424, subclass 442.
- V. Claims 12 and 13, drawn to a diet fed to ruminant animals, classified in class 424, subclass 442.
- VI. Claims 14-16 and 27-29, drawn to an animal diet comprising genetically modified plants, classified in class 424, subclass 442.
- VII. Claim 17, drawn to an animal diet comprising a mixture of alpha-, gamma- and delta-tocotrienols, classified in class 424, subclass 442.
- VIII. Claims 18, 19 and 30-32, drawn to an animal diet comprising plant phenolics, classified in class 424, subclass 442.

Claims 1, 2, 20 and 21 link inventions I-VIII. The restriction requirement between the linked inventions is subject to the nonallowance of the linking claims, claims 1, 2, 20 and 21. Upon the indication of allowability of the linking claims, the restriction

requirement as to the linked inventions shall be withdrawn and any claims depending from or otherwise requiring all the limitations of the allowable linking claims will be rejoined and fully examined for patentability in accordance with 37 CFR 1.104. Claims that require all the limitations of an allowable linking claim will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier. Amendments submitted after final rejection are governed by 37 CFR 1.116; amendments submitted after allowance are governed by 37 CFR 1.312.

Applicants are advised that if any claim(s) including all the limitations of the allowable linking claim(s) is/are presented in a continuation or divisional application, the claims of the continuation or divisional application may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Where a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

The inventions are distinct, each from the other for the following reasons:

Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP §806.04, MPEP §808.01). In the instant case Group I is directed to an animal feed containing alpha-lipoic acid while Group II is directed to an animal feed comprising N-acetylcysteine.

Inventions I and III are unrelated. In the instant case Group I is directed to an animal feed containing alpha-lipoic acid while Group III is directed to an animal feed comprising alpha-lipoic acid and N-acetylcysteine.

Inventions I and IV are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the process as claimed can be practiced by another and materially different apparatus, i.e. by ruminant animals.

Inventions I and V are related as process and apparatus for its practice. In this case, the process as claimed can be practiced by another and materially different apparatus, i.e. by non-ruminant animals.

Inventions I and VI are unrelated. In the instant case Group I is directed to an animal feed containing no genetically modified plants while Group VI is directed to an animal feed comprising genetically modified plants.

Inventions I and VII are unrelated. In the instant case Group I is directed to an animal feed containing an unspecified mix of tocotrienols while Group VII is directed to an animal feed comprising a mixture of alpha-, gamma- and delta-tocotrienols.

Inventions I and VIII are unrelated. In the instant case Group I is directed to an animal feed containing alpha-lipoic acid while Group VIII is directed to an animal feed comprising plant phenolics.

Inventions II and III are unrelated. In the instant case Group II is directed to an animal feed containing N-acetylcysteine while Group III is directed to an animal feed comprising alpha-lipoic acid and N-acetylcysteine.

Inventions II and IV are related as process and apparatus for its practice. In this case, the process as claimed can be practiced by another and materially different apparatus, i.e. by ruminant animals.

Inventions II and V are related as process and apparatus for its practice. In this case, the process as claimed can be practiced by another and materially different apparatus, i.e. by non-ruminant animals.

Inventions II and VI are unrelated. In the instant case Group II is directed to an animal feed containing no genetically modified plants while Group VI is directed to an animal feed comprising genetically modified plants.

Inventions II and VII are unrelated. In the instant case Group II is directed to an animal feed containing an unspecified mix of tocotrienols while Group VII is directed to an animal feed comprising a mixture of alpha-, gamma- and delta-tocotrienols.

Inventions II and VIII are unrelated. In the instant case Group II is directed to an animal feed containing N-acetylcysteine while Group VIII is directed to an animal feed comprising plant phenolics.

Inventions III and IV are related as process and apparatus for its practice. In this case, the process as claimed can be practiced by another and materially different apparatus, i.e. by ruminant animals.

Inventions III and V are related as process and apparatus for its practice. In this case, the process as claimed can be practiced by another and materially different apparatus, i.e. by non-ruminant animals.

Inventions III and VI are unrelated. In the instant case Group III is directed to an animal feed containing no genetically modified plants while Group VI is directed to an animal feed comprising genetically modified plants.

Inventions III and VII are unrelated. In the instant case Group III is directed to an animal feed containing an unspecified mix of tocotrienols while Group VII is directed to an animal feed comprising a mixture of alpha-, gamma- and delta-tocotrienols.

Inventions III and VIII are unrelated. In the instant case Group III is directed to an animal feed containing alpha-lipoic acid and N-acetylcysteine while Group VIII is directed to an animal feed comprising plant phenolics.

Inventions IV and V are unrelated. In the instant case Group IV is directed to an animal feed for non-ruminant animals while Group V is directed to an animal feed for ruminant animals.

Inventions IV and VI are related as process and apparatus for its practice. In this case, the process as claimed can be practiced by another and materially different apparatus, i.e. by ruminant animals.

Inventions IV and VII are related as process and apparatus for its practice. In this case, the process as claimed can be practiced by another and materially different apparatus, i.e. by ruminant animals.

Inventions IV and VIII are related as process and apparatus for its practice. In this case, the process as claimed can be practiced by another and materially different apparatus, i.e. by ruminant animals.

Inventions V and VI are related as process and apparatus for its practice. In this case, the process as claimed can be practiced by another and materially different apparatus, i.e. by non-ruminant animals.

Inventions V and VII are related as process and apparatus for its practice. In this case, the process as claimed can be practiced by another and materially different apparatus, i.e. by non-ruminant animals.

Inventions V and VIII are related as process and apparatus for its practice. In this case, the process as claimed can be practiced by another and materially different apparatus, i.e. by non-ruminant animals.

Inventions VI and VII are unrelated. In the instant case Group VI is directed to an animal feed containing genetically modified plants while Group VII is directed to an animal feed comprising no genetically modified plants.

Inventions VI and VIII are unrelated. In the instant case Group VI is directed to an animal feed containing genetically modified plants while Group VIII is directed to an animal feed comprising no genetically modified plants.

Inventions VII and VIII are unrelated. In the instant case Group VIII is directed to an animal feed containing an unspecified mix of tocotrienols while Group VII is directed to an animal feed comprising a mixture of alpha-, gamma- and delta-tocotrienols.



Because these inventions are independent or distinct for the reasons given above and the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

This application contains claims directed to the following patentably distinct species:

Species I - Election of an animal:

- a. Swine
- b. Poultry
- c. Cattle

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1 and 2 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should Applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hasan S. Ahmed whose telephone number is 571-272-4792. The examiner can normally be reached on 9am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael P. Woodward can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1615

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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